

**PAMELLAN MARIE IRELAND**  
Claimant

**HALLMARK CARDS, INC.**  
Respondent  
Self-Insured

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<sup>2</sup> Claimant/Appellant's Brief to the Board of Appeals at 1 (filed Jan. 29, 2004).

Claimant filed an E-1 Application for Hearing on October 10, 2003, alleging a March 10, 2000 accident resulting in injury to her right elbow. That accidental injury was assigned Docket No. 1,013,229.

Claimant filed a second claim on October 10, 2003, alleging a series of accidents beginning January 24, 2003 "through the present day and continuing" causing her injuries to her bilateral shoulders.<sup>3</sup> That series of accidents was assigned Docket No. 1,013,230.

On October 17, 2003, claimant filed an Application for Preliminary Hearing in both docketed claims. The Application for Preliminary Hearing specifically bore both docket numbers and reads "this is an application for preliminary hearing with regard to accident or occupational disease on: 3-10-00 & 01-24-03 through threp [sic] present."<sup>4</sup>

A preliminary hearing was held before Judge Avery on December 4, 2003. The transcript of those proceedings bears only Docket No. 1,013,230.<sup>5</sup> At the outset of those proceedings Judge Avery announced the case as Docket No. 1,013,230.<sup>6</sup> Neither attorney corrected the ALJ nor made any mention of Docket No. 1,013,229. However, when Judge Avery issued his written decision dated December 4, 2003, it bore only 1,013,229.<sup>7</sup> Respondent filed its Application for an Appeals Board Review and Docketing Statement on December 16, 2003. Like the ALJ's Order for Medical Treatment, that Application for Review only bore Docket No. 1,013,229.

On December 17, 2003, claimant's counsel sent a letter to Judge Avery with a copy to respondent's counsel as follows:

I am in receipt of your Order for Medical Treatment of December 4, 2003 in the above case for docket no. 1,013,229. I do not have the Preliminary Hearing Transcript yet, but my recollection of the statements of counsel immediately before the testimony were that even though I [left] off docket number 1,013,230 (bilateral shoulder claim) from the Preliminary Hearing notice, and it was noticed up for only docket no. 1,013,229 (right elbow claim), that respondent waived the argument of lack of notice of the correct docket number, and we proceeded with the Preliminary Hearing and the evidence.

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<sup>3</sup> Notice of Intent Letter to Hallmark Cards from George H. Pearson (Oct. 10, 2003).

<sup>4</sup> K-WC E-3 Application for Preliminary Hearing (Oct. 17, 2003).

<sup>5</sup> P.H. Trans. at 1.

<sup>6</sup> P.H. Trans. at 3.

<sup>7</sup> Order for Medical Treatment (Dec. 4, 2003).

The Order for Medical Treatment does not list docket number 1,013,230 which is the bilateral shoulder claim and that was really the issue in the case for which medical treatment was sought. The claimant had already had right elbow surgery and the subject of the testimony dealt with her bilateral shoulder claim. I am afraid without the correct docket number being on the Order, we may run into some problems down the road. Would it be possible to issue a Nunc Pro Tunc Order with docket number 1,013,230 so that Ms. Ireland can proceed with Dr. Jones to treat her shoulders? To complicate matters further respondent has appealed the Order. If we need to have a conference call or another Preliminary Hearing please let me know and I will set it up.<sup>8</sup>

The record does not contain any response from respondent's counsel to this letter. On December 22, 2003, Judge Avery entered a Nunc Pro Tunc Order for Medical Treatment which added Docket No. 1,013,230. The Nunc Pro Tunc did not delete Docket No. 1,013,229, but instead bears both docket numbers.

Claimant now argues that because respondent did not file a separate appeal from the Nunc Pro Tunc Order for Medical Treatment, the Board is therefore without jurisdiction to consider any issues pertaining to Docket No. 1,013,230.

Claimant requested a preliminary hearing in both docketed claims. Counsel for claimant and respondent are the same in both claims. As claimant's counsel stated in his December 17, 2003 letter, he inadvertently omitted docket number 1,013,230 from his notice of preliminary hearing served on respondent's counsel. This oversight was addressed at the preliminary hearing (apparently off the record) and "... respondent waived the argument of lack of notice of the correct docket number, and we proceeded with the [p]reliminary [h]earing and the evidence."<sup>9</sup> Afterwards, claimant asked the ALJ "... to issue a Nunc Pro Tunc Order with docket number 1,013,230 so that Ms. Ireland can proceed with Dr. Jones to treat her shoulders?"<sup>10</sup> It seems inconsistent for claimant to now assert that the Board does not have jurisdiction of docket number 1,013,230. Nevertheless, it has been the Board's policy and procedure from its inception, that when claims are consolidated for hearing and award, an appeal of one of the consolidated docketed claims includes the other. In other words, the claims cannot be severed for purposes of appeal after they have been consolidated for trial absent an agreement of the parties. Moreover, in this case the ALJ's December 4, 2003 Order was corrected by an order nunc pro tunc. That correction relates back to the date of the original order. Accordingly, respondent's appeal of the original order is an appeal from an order that encompassed both docketed claims.

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<sup>8</sup> Letter from George H. Pearson III to The Honorable Brad E. Avery (Dec 17, 2003).

<sup>9</sup> *Id.*

<sup>10</sup> *Id.*

Turning now to the merits of respondent's appeal, respondent raises the issue of whether the claimant met with personal injury by accident arising out of and in course of her employment on the dates alleged. As claimant is seeking treatment for her shoulders, the dates of accident alleged are a series beginning January 24, 2003.

Claimant testified that her shoulder problems began in 1999. At that time, her job at Hallmark was that of a packer. She sought treatment on her own with Dr. Bill Marsh who recommended she change jobs. Claimant's job eventually was changed at Hallmark from a packing job to a batch operator.

Respondent sent claimant to be evaluated by Dr. E. Bruce Toby on October 18, 2000. Dr. Toby reported that he did not consider claimant's shoulder condition to be work-related and further did not think it required any medical treatment.<sup>11</sup> Claimant was thereafter informed that her shoulder claim was not being accepted as work-related and authorized treatment was being denied. At that time her symptoms appear to have been confined to her left shoulder. Although it is not clear what caused the onset of her right shoulder problems, claimant testified that they developed after her right elbow surgery. Dr. Lowry Jones performed the right shoulder surgery on May 9, 2003. The right elbow injury is the subject of the claim in Docket No. 1,013,229. Respondent contends that if claimant's right shoulder problems developed when she was not using her right arm at work then it follows that the right shoulder problems are not work-related. Claimant acknowledged returning to a light duty job, that of salvage, following her release from elbow surgery but then returned to her regular batch operator job. Both the salvage and batch operator jobs made her symptoms worsen. Claimant contends that the condition in both her shoulders worsened after she returned to her regular batch operator job. She described the batch operator job as requiring repetitive use of her upper extremities including repetitively reaching above shoulder level.

In his office note entry of June 23, 2003, Dr. Jones stated:

She has returned to work, doing mostly sorting and lifting of cards with her left hand. She states it is causing her shoulders to be significantly painful. Although her shoulders have been a chronic problem, which she reported, we haven't been seeing her for this and not given permission to treat her shoulders. Her pain in her shoulders appears to be primarily scapular bursitis. She is very tender bilaterally.<sup>12</sup>

The Board finds that the record compiled to date establishes that claimant's bilateral shoulder conditions were aggravated by her work activities. Accordingly, the ALJ's Order for Medical Treatment is affirmed.

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<sup>11</sup> P.H. Trans., Cl. Ex. 4.

<sup>12</sup> P.H. Trans., Cl. Ex. 1.

**AWARD**

**WHEREFORE**, it is the finding, decision and order of the Board that the December 4, 2003 Order for Medical Treatment as corrected by the December 22, 2003 Nunc Pro Tunc Order for Medical Treatment entered by Administrative Law Judge Brad E. Avery, is affirmed.

**IT IS SO ORDERED.**

Dated this \_\_\_\_\_ day of April 2004.

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BOARD MEMBER

c: George H. Pearson III, Attorney for Claimant  
John David Jurcyk, Attorney for Respondent  
Brad E. Avery, Administrative Law Judge  
Paula S. Greathouse, Workers Compensation Director